

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

In re Justin and Amber Hyde,

Debtors.

Case No. 23-30927
Chapter 7
Hon. Joel D. Applebaum

_____/

Cynthia Hyde,

Plaintiff,

v.

Adv. P. No. 23-03065-JDA

Amber Hyde,

Defendant.

_____/

**OPINION AND ORDER DENYING DEFENDANT’S MOTION TO
DISMISS**

This matter is before the Court on Debtor/Defendant Amber Hyde’s Motion to Dismiss Plaintiff Cynthia Hyde’s adversary complaint as untimely. For the reasons set forth below, Debtor/Defendant’s Motion is DENIED.

Facts

On May 31, 2023, debtors Justin and Amber Hyde filed a joint chapter 7 bankruptcy petition. The first meeting of creditors was set for July 10, 2023, and the deadline for filing objections to discharge was set for September 8, 2023. Plaintiff

Cynthia Hyde was not listed as a creditor on any of Debtors' schedules nor was she listed on the matrix.

On August 28, 2023, Debtors amended schedule E/F to add a "disputed civil claim" owed to creditor/plaintiff Cynthia Hyde. The disputed debt is valued at zero. (Dkt. 25).

On August 28, 2023, a certificate of service was filed. (Dkt. 26). The certificate indicates that "copies of the Cover Sheets for Amendments and Amended Schedules E and F and Proof of Service were electronically filed and/or deposited in the U.S Mail addressed to: Capital One, P.O. Box 30285, Salt Lake City, UT 84130." The proof of service does not reference plaintiff/creditor Cynthia Hyde.

Pursuant to the filing of the amended schedule E/F, the Clerk's office extended the deadline for filing objections to discharge to October 28, 2023.

On September 12, 2023, the Trustee filed a Notice of Asset Case, notifying the Clerk of the Court that "assets will be administered in this case, and appropriate notice should be given to creditors." (Dkt. 36).

On September 15, 2023, the Bankruptcy Noticing Center (BNC) sent out a Notice to File Proof of Claim Due to Recovery of Assets. Plaintiff/creditor received a copy of this notice because she had been added to the matrix on August 28. (Dkt.

37). The BNC notice was sent to Cynthia Hyde, c/o Hymson, Goldstein et al, 14500 North Northsight Blvd., Ste 101, Scottsdale, AZ 85260-3659.

On October 30, 2023, plaintiff Cynthia Hyde filed an adversary complaint against debtor Amber Hyde, asserting that the debt she is allegedly owed pursuant to a state court action in Arizona is nondischargeable under 11 U.S.C. § 523(a)(6) (willful and malicious injury).

On November 29, 2023, Defendant/Debtor filed the present Motion to Dismiss (Dkt. 14), asserting that Plaintiff's adversary complaint was not timely filed. On December 14, 2023, Defendant/Debtor filed a "memorandum" making the same argument. (AP Dkt. 16).

On December 18, 2023, Plaintiff filed a Response opposing Defendant's Motion to Dismiss (Dkt. 20)

Having reviewed the pleadings and the record, the Court finds that there is no need to hold oral argument on the Motion.

Local Bankruptcy Rule 1009-1 – Amendment of Initial Papers

Local Bankruptcy Rule 1009-1 states, in relevant part:

...

(b) Service of Amendment. The debtor must serve a copy of the amendment and the “Cover Sheet for Amendments” on all entities affected by the amendment and file a certificate of service.

(c) Adding an Omitted Creditor More Than 14 Days Prior to the Meeting of Creditors. A debtor who, more than 14 days prior to the commencement of the meeting of creditors, amends a schedule to add a creditor not previously listed, must comply with subparts (a) and (b).

(d) Adding an Omitted Creditor After 14 Days Prior to the Meeting of Creditors. If an amendment adding a creditor is filed after 14 days prior to the commencement of the meeting of creditors:

(1) the deadlines under F.R.Bankr.P. 4007 and F.R.Bankr.P. 4004 for the filing of complaints under § 523 or § 727, respectively, and the deadline under F.R.Bankr.P. 4003(b) to object to the debtor’s claim of exemptions are extended to allow the added creditor the same number of days in which to file such a complaint or objection as the creditor would have had if the creditor had been properly scheduled when the order for relief was entered;

...

(3) the debtor must serve the amended document, a notice containing a copy of subpart (d) of this rule and a copy of the notice of commencement on the added creditor and file a certificate of service.

LBR 1009-1 (italics added).

In the present case, Debtors filed amended Schedule E/F on August 28, 2023, the date on which the creditor’s meeting concluded, thus falling under LBR 1009-1 (d). Pursuant to that section of the local rule, creditors added in an amended schedule are entitled to the same number of days to file a complaint as the creditor would have had had he been included on the original schedules i.e., 60 days. (See F.R.Bankr.P. 4007(c) (“a complaint to determine the dischargeability of a debt under § 523(c) shall be filed no later than 60 days after the first date set for the meeting of creditors

under § 341(a). . . “)). Thus, assuming that Debtors’ amended schedule E/F was properly filed and served, Plaintiff/Creditor would have had 60 days to file her complaint.

The problem in the present case is that Debtors never served Plaintiff with the amended schedule, thus her 60-day window for filing a complaint did not begin to run on August 28. Plaintiff was never served with the amended schedule, so the filing of her adversary complaint on October 30, which was 63 days after the filing of amended schedule E/F, is timely.¹ The Motion to Dismiss is, therefore, DENIED.

Signed on December 19, 2023



/s/ Joel D. Applebaum

Joel D. Applebaum
United States Bankruptcy Judge

¹ The Court notes that the original deadline for filing non-dischargeability actions was September 8, 2023. When Debtor filed the amended E/F on August 28, 2023, the Clerk’s office mistakenly extended the deadline to Saturday, October 28, 2023. Sixty days from August 28 was actually Friday, October 27, 2023.